

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MALLYGIRL LLC

Opposer,

v.

MALIE, INC.

Applicant.

Opposition No. _____

Attorney's Reference: 44944-228608

NOTICE OF OPPOSITION

In the matter of the application for registration of the trademark MALIE filed by Malie, Inc. ("Applicant"), as shown in Application Serial No. 76/621,291 filed November 19, 2004 based upon the alleged use of the mark since April 16, 2004, and published for opposition in the *Official Gazette* of October 25, 2005.

Mallygirl LLC ("Opposer"), a Delaware limited liability company with its address at 167 Perry Street, No. 1G, New York, New York 10014 believes that it will be damaged by registration of the mark shown in said Application Serial No. 76/621,291, and hereby opposes the same:

As grounds for opposition it is alleged that:

1. Opposer is the successor to the business of Melissa Roncal, owner of U.S. Trademark Application Serial No. 78/184,635 filed November 13, 2002 for the mark MALLY as intended to be used to identify "Cosmetics, namely, eye shadow, lipgloss, lipstick, mascara, lip liners, powdered and liquid blush, nail polish, body sprays, body lotions, bath gels, facial moisturizers, face serums, non-medicated lip balm, non-medicated lip creams, non-medicated lip treatments, baby lotion, facial toners, body talc, artificial eyelashes, artificial fingernails, astringents for cosmetic purposes, baby lotion, body emulsions, body mask creams, body mask lotions, body

mask powders, skin concealers, facial concealers, body concealers, eye pencils, eye makeup remover, eye gels, eye cream, eyebrow pencils, eyeliners, face creams, face powder, facial masks, facial scrubs and body scrubs, foundation makeup, lip cream, make-up remover, nail cream, nail enamel, nail glitter, skin cleansers, wrinkle removing skin care preparations, hair care preparations, namely, hair color removers, hair color, hair conditioners, hair dressings for men, hair dye, hair gel, hair lighteners, hair lotions, hair mascara, hair mousse, hair pomades, hair relaxers, hair relaxing preparations, hair spray, hair rinses, hair styling preparations, sculpting gel, shampoo, shampoo-conditioners, styling gels, styling lotions, talcum powder, cotton balls for cosmetic purposes, pre-moistened cosmetic towelettes, pre-moistened cosmetic wipes, self-tanning lotions, soaps for hands, face and body, sun block preparations."

2. The filing date of Application Serial No. 78/184,635 is prior to the filing date of Application Serial No. 76/621,291.
3. The filing date of Application Serial No. 78/184,635 is prior to the date of first use of the mark MALIE alleged in Application Serial No. 76/621,291.
4. The filing date of Application Serial No. 78/184,635 is prior to any date of first use of the mark MALIE that may be alleged by applicant.
5. The mark MALLY of opposer is substantially similar to the mark MALIE shown in Application Serial No. 76/621,291.
6. The goods for which applicant seeks to register the mark MALIE, i.e., "Scented room sprays, scented linen sprays, scented linen washes, soaps, and cosmetics and cleaners, namely body cleaners, body cream and perfume" are both identical to and related to the goods covered in Application Serial No. 78/184,635.

7. Consumers are likely to be confused and to mistakenly believe that Applicant's goods offered under its MALIE mark either emanate from or are licensed by, sponsored by, or associated with Opposer.
8. Opposer has filed the following U.S. Trademark Application, all of which have been refused registration by the U.S. Patent and Trademark Office based upon an alleged likelihood of confusion with Application Serial No. 76/621,291:
 - a. Application Serial No. 76/624,475 for the mark MALLY.
 - b. Application Serial No. 76/624,478 for the mark MALLY BEAUTY.
9. Opposer is the owner of Application Serial No. 76/614,562 for the mark MALLYGIRL covering cosmetics and various related products.
10. The filing date of Application Serial No. 76/614,562 is prior to the filing date of Application Serial No. 76/621,291.
11. The mark MALLYGIRL of Opposer is substantially similar to the mark MALIE shown in Application Serial No. 76/621,291.
12. The goods for which applicant seeks to register the mark MALIE, i.e., "Scented room sprays, scented linen sprays, scented linen washes, soaps, and cosmetics and cleaners, namely body cleaners, body cream and perfume" are both identical to and related to the goods covered in Application Serial No. 76/614,562.
13. If the Applicant were permitted to use and register its mark for its goods as specified in its application, confusion among consumers resulting in damage and injury to Opposer would be caused by virtue of the similarity between Applicant's trademark and Opposer's trademarks, and the related nature of the goods covered by those marks. Any defect, objection or fault found with Applicant's goods would reflect

upon, seriously injure, and dilute the reputation and value that Opposer has established under its trademarks.

WHEREFORE, Opposer prays that Application Serial No. 76/621,291 be rejected, that no registration be issued thereon to applicant, and that this opposition be sustained in favor of the Opposer.

This Notice of Opposition is submitted in duplicate, together with the statutory filing fee of \$300.00 (Class 3). Should no fee be attached, or any additional fee be required, please charge the same to our Account No. 22-0261 and notify the undersigned accordingly.

Opposer appoints Mark B. Harrison, Andrew Price, Janet Satterthwaite, and Jacqueline Patt, along with the law firm of Venable LLP, P.O. Box 34385, Washington, D.C. 20043-9998 to transact all business on its behalf in connection with this Opposition.

Respectfully submitted,

By: 

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Date: February 22, 2006

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February 22, 2006

Filing Date

Venable Filing Number

Atty. Docket No.:

44944-228608

Re:

MALLYGIRL LLC v. MALIE, INC.

Application No.:

76/621,291

Filed:

November 19, 2004

Patent No.:

Publication Date:

October 25, 2005

Trademark:

MALIE

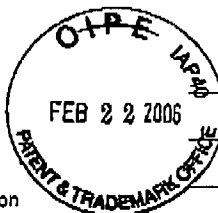
Trademark Reg. No.:

Opposition/Cancellation No.:

Opposition No.

Mark Harrison/Loretta Fuller

The following items were received from Venable
Washington, D.C., by the U.S. Patent & Trademark Office:



U.S. PTO FEES ENCLOSED

Filing Fee

Surcharge Fee

Additional Claim Fee

Recordation/Indexing Fee

IDS Fee

Extension Fee

Notice of Appeal Fee

Brief on Appeal Fee

Oral Hearing Request Fee

Petition Fee

Issue Fee

Maintenance Fee

TM Statement of Use

8 Affidavit Fee

8 and 15 Affidavit

\$ 300.00 § Notice of Opposition Fee

\$ 300.00

Total Fees Paid

Check No.

Attached x

XX Charge Deposit Account No. 22-0261

Response
Amendment to Change Basis
Invention Declaration
National Stage Application
Translation of International Application
New U.S. TM Application (___ specimens)
Rule 53(d) Continuation or Division Application
Rule 53(b) Continuation or Division
Application (In Duplicate) (attach copy of specification,
claims, drawings & declaration)
Priority Document-Cert. Copy of ___ Registration No.

Date ___
Assignment w/ Cover Sheet
IDS w/ PTO - 1449 (___ references)
Response
Amendment
Petition/Request for Extension of Time
Notice of Appeal
Appeal Brief (in triplicate)
Request for Oral Hearing
Confirmation of Hearing Petition
Issue Fee Transmittal
Certificate of Correction
Maintenance Fee Transmittal
TM Statement of Use
Declaration Under 8
Declaration Under 8 and 15
TM renewal Application
NOTICE OF OPPOSITION in duplicate

XX

Request for Corrected Filing Receipt
Terminal Disclaimer

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